Director General of Inland Revenue v Rothmans of Pall Mall (Malaysia) Bhd

SUPREME COURT (KUALA LUMPUR) – SUPREME COURT CIVIL APPEAL NO 232 OF 1987
WAN SULEIMAN, MOHAMED AZMI AND WAN HAMZAH SCJJ
10 MAY AND 25 NOVEMBER 1988

Revenue Law – Double taxation – Singapore income tax paid on income of Singapore branch – Malaysian income tax assessed on same income – Singapore income tax not in respect of same year of assessment as Malaysian income tax – Whether tax payer entitled to double taxation relief – Double Taxation Agreement 1968 between Malaysia and Singapore, art XVIII para 2(i)

In this case the respondent had a branch in Singapore which ceased business permanently on 30 June 1968. When the branch ceased business the Singapore authorities assessed income tax on the respondent for the Singapore year of assessment 1968 on the income of the branch for the period 1 January 1968 to 30 June 1968. The income amounted to $1,329,433 and the income tax assessed was $531,770.20. The respondent paid the tax. In Malaysia the income of the respondent totalling $3,436,029 was charged to income tax of $1,546,214.40 for Malaysian year of assessment 1969. This income included the same income in respect of which the respondent had paid in Singapore the income tax for the Singapore year of assessment 1968. The respondent claimed double taxation relief in respect of the income tax which it had paid in Singapore. This was disallowed by the appellant and an appeal to the Special Commissioners was dismissed. The respondent's further appeal to the High Court was, however, allowed and the appellant appealed to the Supreme Court.

Held (Mohamed Azmi and Wan Hamzah SCJJ), dismissing the appeal:

(1) In para 2(i) of art XVIII of the Double Taxation Agreement 1968 between Malaysia and Singapore, no reference is made to any year of assessment. The paragraph provides that Singapore tax payable in respect of certain income derived from Singapore shall be allowed as a credit against Malaysian income tax on the same income derived from Singapore, irrespective of which year of assessment that Singapore tax was assessed for and irrespective of which year of assessment the Malaysian tax was assessed for.

(2) In the present case the Singapore income tax of $531,770.20 was assessed on the income of the respondent's Singapore branch of $1,329,433. The Malaysian income tax of $1,546,214.40 included income tax assessed on that same income of $1,329,433 of the branch. Therefore a credit of $531,770.20 representing the amount of the Singapore income tax should be given against the Malaysian income tax of $1,546,214.40 although that Singapore income tax was not in respect of the same year of assessment as that Malaysian income tax.

Legislation referred to
Double Taxation Agreement 1968 art XVIII para 2(i)

Appeal from: Tax Appeal No R8-14-1-87 (High Court, Kuala Lumpur)

Abdul Hamid bin Mohamed, Senior Federal Counsel, for the appellant.
S Woodhull for the respondent.

Cur Adv Vult

Wan Hamzah SCJ (delivering the judgment of Mohamed Azmi SCJ and himself): The question for determination by the Supreme Court in this appeal is whether Rothmans of Pall Mall (Malaysia) Bhd (the respondent company) is entitled under the Double Taxation Agreement 1968 between Malaysia and Singapore to double taxation relief in Malaysia for the Malaysian year of assessment 1969 in respect of the Singapore income tax of $531,770.20 paid by the respondent company in Singapore on the profit for the period 1 January 1968 to 30 June 1968.

The following are the facts of the case. The respondent company was incorporated in Malaysia in 1961 and has a place of business at Petaling Jaya, Selangor. It had a branch in Singapore which ceased business permanently on 30 June 1968. When the branch ceased business the Singapore authorities assessed income tax on the respondent company for the Singapore year of assessment 1968 on the income of the branch for the period from 1 January 1968 to 30 June 1968 pursuant to the Singapore Income Tax Act. The income amounted to $1,329,433 and the income tax assessed thereon was $531,770.20. The respondent company paid it. There was no assessment of income tax on the respondent company for the Singapore year of assessment 1969. In Malaysia the income of the respondent company totalling $3,436,029 was charged to income tax of $1,546,214.40 for the Malaysian year of assessment 1969. This income included the same income of $1,329,433 of the branch in respect of which the respondent company paid in Singapore the income tax of $531,770.20 for the Singapore year of assessment 1968. The respondent company claimed from the Director General of Inland Revenue of Malaysia (the appellant) double taxation relief in the sum of $531,770.20 in respect of the income tax which it paid in Singapore, but the appellant disallowed it. The Special Commissioners dismissed the respondent company's appeal and affirmed that the respondent company was not entitled to the relief. The Special Commissioners stated as follows:

> It has to be noted that the 1968 Agreement only provides the double taxation relief on the basis of the year of assessment, which is very clear and explicit and effect should be given to it. In the instant case, the Malaysian tax was for the year of assessment 1969, whereas there was no corresponding assessment raised by the Singapore tax authorities for the year of assessment 1969. As such, there was no way possible to apply the double taxation relief as advocated under the 1968 Agreement.

The respondent company's further appeal to the High Court was allowed, and the appellant now asks the Supreme Court to restore the order of the Special Commissioners.

The provisions of the Double Taxation Agreement 1968 which are relevant in this case are those contained in art XVIII para 2(i) which read as follows:

Subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Singapore tax payable whether directly or by deduction, in respect of income derived from Singapore, shall be allowed as a credit against Malaysian tax chargeable in respect of that income.

It should be noted that in para 2(i) of art XVIII no reference is made to any year of assessment, so that it is immaterial and irrelevant which year of assessment the tax mentioned in that paragraph is in respect of. It is important to note the words 'that income' at the end of that paragraph. These words specifically and expressly refer to the same 'income derived from Singapore' referred to earlier in that paragraph. Thus that paragraph means that Singapore tax payable in respect of a certain income derived from Singapore shall be allowed as a credit against Malaysian tax assessed on that same income derived from Singapore, irrespective of which year of assessment that Singapore tax was assessed for and irrespective of which year of assessment that Malaysian tax was assessed for. In the present case the Singapore income tax of $531,770.20 referred to above was assessed on the income of the respondent company's Singapore branch of $1,329,433. The Malaysian income tax of $1,546,214.40 referred to above includes income tax assessed on that same income of $1,329,433 of the branch. Therefore a credit of $531,770.20 representing the amount of that Singapore income tax should be given against that Malaysian income tax of $1,546,214.40 although that Singapore income tax was not in respect of the same year of assessment as that Malaysian income tax.

Therefore the decision of the High Court is correct. We dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.*

Reported by *Prof Ahmad Ibrahim*

Ho Shee Jan v Hadayat Harta Holdings Sdn Bhd

SUPREME COURT (KUALA LUMPUR) – SUPREME COURT CIVIL APPEAL NO 551 OF 1987
SALLEH ABAS LP, MOHAMED AZMI AND WAN HAMZAH SCJJ
23 MARCH AND 25 NOVEMBER 1988

Land Law – Caveat – Sale of land – Agreement for repurchase – Repurchase price paid in full – Land registered in name of original vendor – Caveats entered against land – Aplication by purchaser to have caveats removed

The respondent in this case had agreed to sell three lots of land to the appellant for the price of $330,000 which the respondent acknowledged to have received. It was agreed in the agreement that the respondent should be the developer and contractor for the construction of all housing units on the land as approved by the authorities and that the respondent should complete the development and construction work at the respondent's expense within a period of 30 months from the date of the agreement or such extended period as the appellant might agree. It was also agreed that the respondent should repurchase the said land for the sum of $580,000. Although the purchase price was paid in full the said land had not been transferred to the name of the appellant and the respondent's name remained as the registered owner. The appellant subsequently applied to enter caveats against the land. He claimed to be the purchaser of the land and also claimed that the respondent had not completed the repurchase of the land. The respondent applied to the High Court for the removal of the caveats. The respondent contended that the repurchase had been completed and it had become the owner and the appellant had no more caveatable interest in the said land. It was not disputed that the respondent had paid the appellant a total sum of $360,000 towards the repurchase price of $580,000. The balance sum of $220,000 was the subject matter of the subsequent transactions between the parties as a result of which the respondent contended that the balance of the repurchase price had been paid, but the appellant contended otherwise.

The learned judge of the High Court granted the application of the respondent for removal of the caveats. The appellant appealed to the Supreme Court.

Held (Mohamed Azmi and Wan Hamzah SCJJ), dismissing the appeal:

(1) On the facts the respondent had paid the appellant in full the repurchase price of $580,000 and therefore the appellant did not have a caveatable interest any more in the said land or the subdivided lots thereof.

(2) All the caveats should be removed, except the caveats which had been entered against the lots agreed to be sold by the respondent to the appellant.

Legislation referred to
Evidence Act 1950 ss 91, 92

Appeal from: Originating Motion No 32-15 of 1986 (High Court, Johore Bahru)

Teh Poh Taik for the appellant.
Choo Kong Yong for the respondent.

Cur Adv Vult

Wan Hamzah SCJ (delivering the judgment of Mohamed Azmi SCJ and himself): Hadayat Harta Holding Sdn Bhd ('Hadayat') entered into an agreement dated 29 August 1981 ('the main agreement') with Ho Shee Jan ('Ho') whereby Hadayat agreed to sell to Ho three lots of land ('the said land') in the Mukim of Jeram Batu which were at that time registered in Hadayat's name under Grants No 5, 6 and 7 for Lots No 3786, 3787 and 3788 respectively, for the price of $330,000, which Hadayat acknowledged to have received, free from all encumbrances and with vacant possession. At that time an application for the subdivision of the lots and for the issue of separate titles for the subdivided lots had been made to the proper authorities, and it was agreed in the main agreement that Hadayat should be the developer and contractor for the construction of all the housing units on the said land as approved by the authorities and that